IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.62 OF 1993

1. Bhogilal Valchand Shah,)
as Karta of his HUF and in his)
individual capacity.)

2. Sharad Bhogilal Shah,)
as Karta of His Huf and in his)
individual capacity, both)
residing at Manival 2,)
Castellino Road,)
Pune 411 001.)..Petitioners
(Org.Org.Defets
Nos.1 and 2.)

Versus

1. Pannaal Valchand Shah,)
Karta of his HUF and in his)
individual capacity,)

2. Atul Pannalal Shah,)
as Karta of his Huf and in his)
individual capacity.)

3. Satish Pannalal Shah,)
as Karta of his HUF and)
in his individual capacity,)
all the three residing at)
11 Gautambag Society, Palli,)
Ahmedabad.)

4. M/s.Kaytons, a partnership)
firm since dissolved having)
its office at 538, Centre Street,)
Pune 411 001.)

5. M/s.Prompt, a partnership firm,)
since dissolved, having its)
office at 538, Centre Street,)
Pune 411 001.)..Respondents

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Shri C.R.Dalvi, Advocate for Mrs.Sushama Gorwadkar, advocate for the petitioners.

Shri V.G.Muzumdar for respondent No.1.

Shri K.Y. Mandlik for respondent No.5.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 1st December, 2004.

Oral Judgment:

1. Heard the learned advocates for the parties. Perused the records.

2. The petitioners challenge the order dated 13th November, 1992 passed by the Civil Judge, Junior Division, Pimpari, Pune in Civil Suit No.157 of 1992 rejecting the application filed by the petitioners for holding necessary inquiry in relation to the value of the suit property considering the fact that the suit is primararily for possession, and though the prayer for the relief of restoration of the possession has been asked in alternative, it is necessary for the plaintiff to disclose the market value of the property and to pay the Court fee thereon. It is the case of the petitioners that the respondent No.1/plaintiff has neither valued the suit property nor paid the Court

fee thereon inspite of the fact that there has been a relief prayed for restoration of the possession of the immovable property.

3. The learned advocate appearing for the petitioners drawing attention to the contents of the plaint has submitted that though the prayer clause discloses the relief in the nature of possession having been claimed in the alternative, the pleadings in the plaint, read as a whole, reveal that the suit is essentially for possession of the immovable property and even the relief in the nature of injunction, itself discloses absence of possession of the premises with the plaintiff. Considering the provisions of law comprised under Order VII Rule 1 of the Code of Civil Procedure, 1908, clause (i) thereof, it is necessary for the plaintiff to value the subject matter of the suit for the purpose of jurisdiction and Court fee, so far as the case admits, and considering the same and the description of the immovable property, restoration of which is sought for, the valuation if disclosed may even affect the jurisdiction of the Court before whom the plaint is presented for adjudication of the dispute between the parties. Reliance is also placed in the decisions in the matter of **Lakhiram Ramdas v. M/s.Vidyut Cable and**

Rubber Industries, reported in 1963 (Vol.65) BLR 604, **Miss Aninha D'Costa v. Smt.Parvatibai M. Thakur,** reported in 1963 Vol.66 BLR 744, and **Nagin Mansukhlal Dagli v. Haribhai Manibhai Patel,** reported in 1980 Bombay 123.

4. The learned advocate for the respondents, on the other hand, has submitted that the prayer for restoration of possession is in the nature of alternative relief asked for, and therefore, it is not necessary for the respondent/plaintiff to value the suit, and in any case nothing prevents the Court from fixing the valuation and asking the plaintiff to pay the Court fee before issuance of decree in the suit. He has further submitted that the suit is essentially for injunction, and therefore, there is no case for interference in the impugned order in revisional jurisdiction.

5. The provisions of law comprised under Order VII Rule 1 of the Code of Civil Procedure, 1908 clearly enumerates various particulars which must find place in a plaint to be filed in a Civil Court. In terms of clause (i) thereof, the plaint should disclose the statement of value of the subject matter of a suit for the purpose of jurisdiction and Court

fees, so far as the case admits. It is also to be noted that in terms of the provisions comprised under Rules 7 and 8 of Order VII of the Code of Civil Procedure, it is obligatory for the plaintiff to specifically state the relief prayed for. Rule 7 provides that every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for, and same rule shall apply to any relief claimed by the defendant in his written statement. Rule 8 provides that where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated as far as may be separately and distinctly. In other words, even though the Court is empowered to mould the relief in a given situation, it is primararily necessary for the plaintiff to specifically state the relief required in the facts of the case, and taking into consideration the provisions of Rule 1(i) of Order VII of the Code of Civil Procedure, it is obligatory for the plaintiff to disclose the value of the subject matter of the suit for the purpose of jurisdiction as well as the Court fees, so far as the case admits, which would

obviously include the pleadings and the relief asked for in the matter.

6. It is undisputed fact that the jurisdiction of the Civil Judge, Junior Division, is restricted to the amount specified under the Maharashtra Civil Courts Act and when the said limit exceeds, the suit is required to be tried by the Civil Judge, Senior Division. Being so, in order to ascertain the jurisdiction of the Court to deal with the matter, valuation of the subject matter plays a very important role, and therefore, it is absolutely necessary for the plaintiff to disclose the same with all necessary details and accordingly to pay the Court fees. In fact, the State Amendment to the clause (i) of Rule 1 of Order VII of the Code of Civil Procedure requires the provision of law under which the valuation for the Court fee and jurisdiction has to be disclosed and it has to disclose such valuation for the purpose of Court fees as well as for the purpose of jurisdiction separately.

7. It is also to be noted that in terms of Rule 11(b) of Order VII of the Code of Civil Procedure, the plaint is liable to be rejected where the relief claimed is under-valued, and the plaintiff, on being

required by the court to correct the valuation within a specified time by the Court, fails to do so. So also in terms of clause (c) thereof where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time specified by the Court, fails to do so, the plaint is liable to be rejected. It is, therefore, not only necessary for the plaintiff to disclose the correct valuation of the subject matter and with reference to the relief claimed for in the suit and to pay appropriate Court fees thereon, but it is also necessary for the Court to take appropriate steps to discourage the lapses on the part of the plaintiff in the matter of valuation of the subject matter and the relief asked for, and in that regard to take necessary action in terms of Rule 11 of Order VII of the Code of Civil Procedure, 1908.

8. It is also to be noted that Section 8 of the Bombay Court Fees Act, 1959 clearly provides that "if the Court is of the opinion that the subject matter of any suit has been wrongly valued or if an application is made to the Court for the revision of any valuation made, the Court may revise the valuation and determine the correct valuation and may hold such inquiry as it

thinks fit for such purpose." Specific powers are available to the Court in that regard in view of the provisions comprised under Sections 9 and 10 of the Bombay Court Fees Act, 1959.

9. In the case in hand, undisputedly, the respondent/plaintiff, under clause (b) of Paragraph 19 of the plaint, has prayed that :-

> "In the alternative, the Hon'ble Court may be pleased to direct the defendants Nos.1, 2, 4 and 5 to hand over the possession of the suit premises which was being used for the business of M/s.Keytons that is defendant No.5, to the plaintiff if in the opinion of the Hon'ble Court, the suit premises is in the occupation of the defendant Nos.1, 2 and 4."

Undoubtedly, the said clause is preceded by prayer clause (a) for injunction, and it reads thus:-

> "THAT THE HON'BLE COURT MAY BE PLEASED to restrain the defendant Nos.1, 2, 4 and 5 or their agents, representatives, servants and employees by a permanent injunction from using and/or occupying and/or permitting directing

or indirectly to use or occupy the suit premises or portion thereof for carrying out any other business operation or for any other purpose and to restrain defendant no.1 and 2 by permanent injunction from preventing the plaintiff from entering into and occupying and using the suit premises."

10. It is pertinent to note that the pleadings in the plaint apparently disclose that the premises were all along, in the use and occupation of M/s.Keytons, i.e. defendant No.5, for its business which was of processing, blending and packaging of tea products for Hindustan Lever Ltd. and Lipton India Ltd. The pleadings also disclose that the establishments of M/s.Prompt, i.e. defendant No.6, and M/s.Keytons, the defendant No.5, were family concerns and the defendant Nos.1, 2 and the plaintiff were the common partners of the said family concerns. The pleadings further disclose that by notice dated 1st July, 1992 issued by the plaintiff and the defendant Nos.3 and 4 through their advocate to the defendant Nos.1 and 2, permission given by them for use of the suit premises for the business of M/s.Keytons was sought to be withdrawn and the defendant Nos.1 and 2 were requested to stop using the suit premises, which was not

complied with by the defendant Nos.1 and 2. The pleadings also reveal that the partnership firms, i.e. M/s.Prompt-the defendant No.6 and M/s.Keytons- the defendant No.5, were dissolved on 25th January, 1991, much prior to the issuance of the said notice dated 1st July, 1992. Taking into consideration the pleadings, the same apparently disclose that the suit is essentially for possession of the premises as submitted by the learned advocate for the petitioners. Undoubtedly, a relief in the nature of permanent injunction has also been prayed for. But merely because the plaintiff has prayed for a relief of permanent injunction, it cannot be concluded to be a suit for injunction simplicitor, when the pleadings apparently disclose the same to be essentially a suit for possession wherein also a relief of permanent injunction is being prayed for.

11. It is true that the relief for possession is stated to have been prayed in the alternative. However, merely because the plaintiff has used the expression "in the alternative" in the clause (b) of the prayer, taking into consideration the plaint as a whole, the relief for possession, by no stretch of imagination, can be said to have been asked as a relief in the alternative. It is in fact primary

relief asked for and simultaneously there is a relief for injunction prayed for therein. Bearing the same in mind, it is obvious that the respondent/plaintiff was required to disclose the valuation of the subject matter in terms of the relevant provisions of law comprised under the Suits Valuation Act, 1887 as well as the Bombay Court Fees Act. 1959 read with the provisions comprised under Order VII of the Code of Civil Procedure, 1908.

12. The Division Bench of this Court in **Lakhiram Ramdas's case (supra),** had clearly ruled that the Court has to see the substance of the plaint and not to go by the mere form, and the plaint may cleverly be drafted to represent the same as if it is a suit for injunction. If the reading of the plaint as a whole discloses that the suit to be for possession, it would be necessary for the Court to direct the plaintiff to disclose the correct valuation of the subject matter and to pay the court fees accordingly.

13. The Division Bench has clearly held in the facts of the case before it in **Lakhiram Ramdas's case (supra),** "the substance of the plaint though cleverly drafted is that the defendants should remove themselves from the premises and should not thereafter

interfere with the plaintiff's possession either by entering or interfering with the same. This is merely putting in a very ingenious form the substantive prayer for possession and cannot be regarded as merely a prayer for injunction. The plaintiff being out of possession can only ask for possession and his being in constructive possession as a landlord or a mortgagor or an owner, where a trespasser is squatting on his property cannot avail. What, in effect, he wanted was removal of the defendants which amounts to eviction and actual possession which the defendants were not to be allowed to disturb." Plain reading of the plaint in the case in hand, apparently, discloses that the facts pleaded therein are not much different from those in the matter of Lakhiram Ramdas's case. As already observed above, the contents of the plaint disclose the occupation of the suit premises by the defendant Nos.1 and 2 in the name of the defendant No.5 for the use of its business and though the plaintiff was also partner thereof, the partnership was dissolved on 25th January, 1991, and the notice was served on 1st July, 1992 upon the defendant Nos.1 and 2 to stop using the said premises for any purpose by the said defendants, and as there was no compliance of the said notice, the suit was filed in the year 1992. Undoubtedly, there is also a statement that the

business of M/s. Keytons has been shifted to another place. However, the pleadings nowhere disclosed the exclusive possession or full control of the plaintiff in relation to the possession of the suit premises on the date when the suit was filed. In the background of these pleadings, therefore, the suit is essentially held to be a suit for possession which will require the valuation of the suit property and payment of court fees thereon, in accordance with the provisions of law applicable to the same.

14. The Division Bench of this Court in **Miss Aninha D'costa's case (supra)** has also ruled that while considering any document, the Court has to consider the whole document and cannot refuse to give effect to a term of the document on the ground that it is placed at one place and not at the other place, and therefore, as long the agreement between the parties is clear, the place where the terms of document is found cannot matter.

15. Again the Division Bench in **Nagin Mansukhal's case (supra),** dealing with the case wherein the relief prayed for was for mandatory injunction against the defendants for removal from the suit flat, held that such a relief in substance is none other than the

relief for recovery of possession of the property. It was held thus:-

> "Prayer (b) of the plaint, in the guise of a prayer for a mandatory injunction against the defendant to remove himself from the said flat, is in substance no other than a prayer for recovery of possession of the said flat. Realizing full well that the proper relief to pray for would be a decree or order for possession but at the same time being desirous of bringing the suit in this Court and simultaneously not wishing the suit to suffer from a technical defect, the draftsman of the plaint has in the said prayer sought to protect the plaintiff by using the phraseology "that the defendant be ordered and decreed by a mandatory order or injunction ....." Thus, really, what is prayed for is a decree for possession. It is now well settled that when we have to determine the nature of the suit what we are to look at is the real substance of the suit and not legal ingenuity in drafting the plaint. The plaint read as a whole and the real substance of the suit leave no doubt that this is a suit between persons

> who hold the character of a licensor and licensee, which relationship having come to an end according to the plaintiff, the plaintiff has become entitled both in law and under the agreement of licence to recover possession of the property from the defendant, his licensee."

16. Considering the law being well settled on the aspect of ascertaining the nature of the suit that the plaint is required to be seen as a whole, and considering the plaint in question, as already observed above, the suit being essentially for possession of the immovable property, the plaintiff is required to disclose the valuation of the subject matter and to pay accordingly the court fees thereon. Since admittedly the plaintiff has not disclosed the valuation of the subject matter of the suit in relation to the relief for restoration of possession, it was but natural that the court below was required to hold necessary inquiry in terms of Section 8 of the Bombay Court Fees Act, 1959, and therefore, the petitioner was justified in raising the said issue before the Court below.

17. Undoubtedly, the matter relating to the

valuation of the property is primararily at the discretion or at the option of the plaintiff. Nonetheless when the plaintiff for whatever reason either does not disclose valuation or disclose incorrect valuation, nothing prevents the defendant from raising objection in that regard and if so raised, it would be obligatory for the Court to apply its mind in that regard and decide the said issue. Even otherwise, considering the provisions of Order VII Rules 1 and 11 of the Code of Civil Procedure, nothing precludes the Court itself from exercising its jurisdiction in that regard and to examine the valuation disclosed in the plaint and if necessary to issue appropriate directions. In fact, the law in that regard is well settled by the decision of the Apex Court in **Sujir Keshav Nayak v. Sujir Ganesh Nayak,** reported in 1992(1) SCC 731.

18. For the reasons stated above, therefore, it is apparent that the dismissal of the application by the trial Court was clearly in improper exercise of its jurisdiction and at the same time, in fact, discloses failure to exercise its jurisdiction in relation to its duty to ascertain whether the plaint discloses correct valuation of the subject matter and payment of court fee thereon. Being so, the impugned order

cannot be sustained and is liable to be set aside and the matter to be remanded to the trial Court to hold necessary inquiry in terms of Section 8 of the Bombay Court Fees Act, 1959 and to pass appropriate order on such inquiry, bearing in mind the observations made hereinabove.

19. In the result, therefore, the petition succeeds. The impugned order is hereby quashed and set aside and the matter is remanded to the trial Court to hold necessary inquiry in terms of Section 8 of the Bombay Court Fees Act, 1959 and to pass appropriate order on such inquiry, bearing in mind the observations made hereinabove. The rule is made absolute in above terms with no order as to costs.